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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TORETTO MICHAEL REDHORSE,

Defendant.

**ORDER
AND
MEMORANDUM DECISION**

Case No. 2:16-CR-011 TC

On May 17, 2017, the court found Defendant Toretto Michael Redhorse incompetent to stand trial and committed him to the custody of the Attorney General “for . . . a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future” he will be restored to competency. June 2, 2017 Mem. Decision & Order, Doc. 52 (citing 18 U.S.C. § 4241(d)).

On August 9, 2017, the court ordered that the Attorney General or his designee file a detailed report with the court by September 15, 2017, providing an opinion as to whether Mr. Redhorse is now competent or whether a substantial probability exists that in the foreseeable

future he will attain competency. Doc 55. The court in this order also required that if the court determines that Mr. Redhorse is not competent and will not likely attain competency in the foreseeable future, the government should be prepared to file any certificates it deems necessary under 18 U.S.C. § 4248 or 18 U.S.C. § 4246. This order authorized Dr. Angela Eastvold, the psychological expert for the defense, to visit and evaluate Mr. Redhorse.

Reports from Dr. Evan S. Du Bois (9/14/17) from the Bureau of Prisons and Dr. Eastvold (9/24/17) were submitted to the court opining on Mr. Redhorse's current status as to his competency. Both doctors opined that Mr. Redhorse has not attained the capacity to permit the proceedings to go forward. Dr. Du Bois indicated that with continued intervention Mr. Redhorse "may be able to attain the capacity required to proceed in the foreseeable future." Dr. Du Bois requested an additional 120 day evaluation and treatment period pursuant to Title 18 U.S.C. § 4241(d). In response to Dr. Du Bois' requested extension, Dr. Eastvold opined that Mr. Redhorse is not currently competent and that she could not say with probable certainty that Mr. Redhorse would attain comprehension beyond strict memorization and that he would not attain competency after an additional 4 months.

In further compliance with the court order of August 9, 2017, Dr. Du Bois submitted a report dated September 19, 2017, addressing whether any certificates of dangerousness would be issued pursuant to 18 U.S.C. § 4248 and 18 U.S.C. § 4246. In this report Dr. Du Bois explains that the issue of whether Mr. Redhorse is a dangerous or sexually dangerous person was referred to the Federal Bureau of Prisons' Certification Review Panel. The Panel determined that Mr. Redhorse will not be certified as dangerous or sexually dangerous person under 18 U.S.C. § 4248 and 18 U.S.C. § 4246.

An evidentiary hearing had been scheduled for October 30, 2017, to address Mr. Redhorse's competency and the attainability of competency. On October 20, 2017, the parties submitted a Joint Request to Submit for Decision. Doc 62. In this pleading the parties represented to the court that live testimony of Dr. Du Bois and Dr. Eastvold would not differ from their opinions set forth in their reports previously submitted to the court.

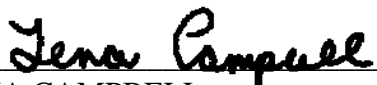
After careful review of the reports the court FINDS as follows:

After efforts have been made by the Attorney General or his designees to intervene and assist Mr. Redhorse in attaining competency, Mr. Redhorse continues to be incompetent to stand trial because of a mental disease or defect. The court also finds that there is not a substantial probability that in the foreseeable future Mr. Redhorse will attain the capacity to permit the proceedings to go forward.

Because the Federal Bureau of Prisons' Certification Review Panel has determined that Mr. Redhorse will not be certified as a dangerous or sexually dangerous person and there is evidence that Mr. Redhorse is not dangerous or sexually dangerous, the court will not order a hearing pursuant to 18 U.S.C. § 4248 and 18 U.S.C. § 4246.

DATED this 6th day of November, 2017

BY THE COURT:



TENA CAMPBELL
Sr. United States District Court Judge